

NOT INCLUDED IN
BOUND VOLUMES

PHMc
Sausalito, CA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SCOMA'S OF SAUSALITO, LLC

and

Case 20-CA-116766

UNITE HERE, LOCAL 2850

ORDER DENYING MOTION FOR RECONSIDERATION

On August 21, 2015, the National Labor Relations Board issued a Decision and Order in this proceeding, finding that the Respondent violated Section 8(a)(5) and (1) by withdrawing recognition from the Union because it failed to prove that the Union had actually lost majority support on the date of the withdrawal of recognition.¹ To remedy the violations, the Board ordered the Respondent to recognize and, on request, bargain with the Union. On September 1, 2015, the Respondent filed a Motion for Reconsideration. On September 4, 2015, the General Counsel filed a reply to the Respondent's motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Respondent contends that the Board committed a material error by failing to consider its Exception Number 6, which states: "Charged Party excepts to the ALJ's ruling that the Union had no duty to inform Scoma that it had obtained revocation signatures from decertification signers sufficient to defeat majority support before, or even after, Scoma withdrew recognition." The Respondent bases its argument on former Member Johnson's observation that had "the issue

¹ *Scoma's of Sausalito*, 362 NLRB No. 174 (2015). Chairman Pearce did not participate in the underlying decision, but agrees with the disposition of the instant motion.

[been] raised in exceptions, however, he would modify the *Levitz*^[2] standard by requiring that unions present evidence of reacquired majority support within a reasonable amount of time.”

362 NLRB No. 174, slip op. at 1 fn. 2. The Respondent further contends that the Board erred by failing to reinstate the employees’ withdrawn decertification petition and order an election.

Having duly considered the matter, we find that the Respondent has not identified any material error or demonstrated extraordinary circumstances warranting reconsideration under Section 102.48(d)(1) of the Board’s Rules and Regulations. Specifically, the Respondent has raised no substantial argument not previously considered by the Board. In affirming the judge’s findings, the Board adopted her rejection of the Respondent’s argument that an incumbent union must provide an employer with notice of reacquired majority support.³ The Board also rejected the Respondent’s proposed remedy, observing among other things that an affirmative bargaining order is the “traditional, appropriate remedy” for an unlawful withdrawal of recognition from an incumbent union. Thus, contrary to the Respondent’s assertions, the Board’s Decision and Order was based on a thorough review of the judge’s decision, the record, and the parties’ arguments. Accordingly, we deny the motion.

IT IS ORDERED, therefore, that the Respondent’s Motion for Reconsideration is denied.

Dated, Washington, D.C., October 29, 2015.

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Lauren McFerran, Member

² *Levitz Furniture Co. of the Pacific*, 333 NLRB 717 (2001).

³ Former Member Johnson’s personal view that the Board should modify the *Levitz* standard in a future appropriate case does not support the Respondent’s supposition that the Board did not fully consider all of the Respondent’s exceptions to the application of that standard in this case.

(SEAL)

NATIONAL LABOR RELATIONS BOARD